BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

CARMELITA J. McADAMS)
Claimant)
VS.)
) Docket No. 256,076
SUMMITT RESCARE OF KANSAS)
Respondent)
AND)
)
TRAVELERS INSURANCE COMPANY)
Insurance Carrier)

ORDER

Respondent appeals the preliminary hearing Order of Administrative Law Judge Pamela J. Fuller of February 23, 2001. The Administrative Law Judge granted claimant medical benefits and temporary total disability compensation for the accident of January 2, 2000.

Issues

Did claimant suffer accidental injury arising out of and in the course of her employment with respondent on the date alleged?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury on January 2, 2000, when, as she was arising from a couch in one of the apartments of a tenant for whom she provided personal care, she twisted her ankle. It was claimant's job to care for the needs of the handicapped person located in that apartment, including preparing breakfasts and performing work incidental to assisting this individual. Claimant was in the work area, attending to some paperwork, when she realized it was time for her to fix her patient's breakfast, get them up and feed them. As she arose from the couch, she took a step and twisted her ankle. Respondent acknowledges claimant's accidental injury arose in the course of her employment. However, respondent contends claimant has failed to prove that the injury arose out of her employment with respondent. Respondent cites Butera v. Fluor Daniel

<u>Construction Corporation</u>, ____ Kan. App. 2d ____, 18 P.3d 278 (2001), where the Court of Appeals reaffirmed that,

To be compensable, an injury "must arise out of a risk in some way peculiar to that in which he was engaged and not out of a hazard to which he would be equally exposed outside of the business." (Quoting Covert v. John Morrell & Co., 138 Kan. 592, 593-94, 27 P.2d 553 (1933)).

In this instance, the Appeals Board finds that the activity of arising from the couch, on which claimant was sitting while preparing paperwork, in order to prepare breakfast for her patients was an injury which arose out of her employment with respondent. The Board has held, on many occasions, persons arising from or working in seated positions and who are injured have suffered injuries arising out of their employment. See Barnett v. Ratheon Aircraft Company, WCAB Docket No. 211,829 (August 1996) (claimant arose from a stool and twisted, felt a pop in his back); Westover v. Flexel, Inc., WCAB Docket No. 205,057 (June 1997) (while arising out of a chair, claimant bent over to pick up a pencil and sneezed); Turley v. State of Kansas, WCAB Docket No. 247,457 (November 1999) (while sitting in a chair and pulling herself towards a desk, claimant herniated two discs in her back); Debernardin v. American Yearbook Company, Inc., WCAB Docket No. 225,835 (November 1997) (while claimant was getting up and down in a chair, he felt a pain in his low back).

In this instance, claimant was sitting on a couch working on paperwork when, realizing she had to prepare breakfast for her charges, she arose and twisted her ankle. The Appeals Board finds this activity was an action which arose out of her employment, as it was the necessity of feeding her charges which caused claimant to rise from the couch.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller of February 23, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2001.

BOARD MEMBER

c: Kerry McQueen, Liberal, KS William L. Townsley, III, Wichita, KS Pamela J. Fuller, Administrative Law Judge Philip S. Harness, Director